

**REMARKS**

Claims 2-20, 24-42, 46-63 and 87-105 remain in this case for consideration. Claims 2, 6-9, 24, 28-30, 46, 50-52, 87 and 91-93 have been amended to better define Applicants' invention. Support for Applicants' claim amendments can be found, among other places, in paragraphs 30-32 of Applicants' patent application.

A. Prior Art Rejections

1. The Invention

Applicants have invented a data rating software application which is programmed into a wireless device to determine the actual charges assessed for wireless data communications, which can then be used to update an account balance. Unlike existing systems which calculate wireless communication charges by selecting, usually at the network server, a rate based upon distance or time-of-day and then multiplying that rate by the duration of the phone call, Applicants' data rating software application allows the wireless device itself to select one or more rates and one or more units of measure applicable to the data communication session as determined by type of data, the usage of the data, the source of the data, the service level selected, the service level achieved and/or the connection method wherein the units of measure include the quantity of bytes, quantity of data packets and/or the connection involved in the communication. In some embodiments, the selection of rates and units of measure is triggered by the data rating application detecting an event which takes place during the course of setting up the data communication session (e.g., a detected connection between the wireless device and the network).

2. The Cited Art Distinguished

Claims 2-7, 9-20, 24-29, 31-42, 46-51, 53-63, 87-92 and 94-105 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Sainton's U.S. Patent No. 5,854,985 ("Sainton patent"). Claims 8, 30, 52 and 93 have been rejected under 35 U.S.C. § 103(a) as being obvious over the Sainton patent in view of Applicants' so-called "admitted prior art."

The Sainton patent discloses an omni-modal radio apparatus which allows the user to collect rating and performance information from various networks and then, based upon user defined criteria, use the collected information to choose the most favored network through which to transmit communications. The user defined criteria can include: (1) the cost of sending a data message, (2) the quality of transmission link, (3) the potential for being bumped off of the system, (4) the security of transmission, and (5) any special criteria which the user could variably program into the omni-modal radio apparatus. With respect to data transmission, Sainton's omni-modal radio apparatus can look at the type and quantity of the data to be transmitted in order to "predict" what the "expected cost" of data transmission will be. (See, Sainton patent, col. 17, Ins. 6-15). While Sainton provides the user with flexibility to choose a favored network for transmitting information, Applicants find no disclosure in the Sainton patent of such flexibility for receiving information.

In Applicants' invention, a data rating software application is programmed into the wireless device to calculate the *actual* charges assessed for a data communication, which can then be used to update an account balance. Applicants' data rating software calculates these actual charges by selecting one or more rates and one or more units of measure applicable to the data communication session as determined by type of data, the usage of the data, the source of the data, the service level selected, the service level achieved and/or the connection method wherein the units of measure include the quantity of bytes, quantity of data packets and/or the connection involved in the communication.

The calculation of *actual* charges within the wireless device using Applicant's data rating software application is an important advantage of Applicants' invention over existing

network centric billing systems. As explained in paragraphs 6 through 9 of Applicants' specification, monitoring and keeping track of data packets accurately for billing purposes at the network level is not a simple task. When data packets are sent to a destination, they are usually routed via several nodes and networks before they reach their final destination. Traversing several networks presents a problem from a monitoring and billing perspective because different networks often handle and bill data packets differently. The problem of accounting for data transmission is further complicated when the network(s) needs to resend some packets, possibly through alternative routes. As such, a complicated arrangement of servers and protocols is needed to coordinate billing information between networks, and among nodes within the same network, for the typical data communication.

By contrast, in Applicants' system, all the charges for data billing are calculated in the wireless device by the data rating software application and, as such, reside in the wireless device itself. In Applicants' system, there is no need for network servers to coordinate among themselves to determine the charge for a data transmission. A robust data rating algorithm is built into the wireless device which does all the necessary calculation for both outgoing and incoming data communications.

In the Sainton patent, there is no disclosure of calculating *actual* data transmission charges within the wireless device. In fact, the Sainton patent teaches just the opposite when it say that an "expected cost" can be "predicted" from Sainton's software. (See, Sainton patent, col. 17, lns. 6-15). Plainly, Sainton envisions working within the standard network system of having the actual costs calculated at the network switch by the various network servers coordinating their billing information. The portion of the Sainton specification cited by the Examiner to

allege that "Sainton further teaches the data rating application is configured to update an account", specifically column 18, lines 19-30 of the Sainton patent, teaches nothing of the sort. All that is disclosed in column 18, lines 19-30 of the Sainton patent is that network rating and performance information can be stored in the radio apparatus by the user for future reference.

In addition to missing disclosure of actual charges being calculated by the wireless device, the Sainton patent also fails to disclose other features of Applicants' invention. For example, because Sainton is focused on selecting a network for outgoing communications, Applicants find no disclosure in the Sainton patent of using the "source of data" and "usage of data" as criteria for data rating as referenced in all of Applicants' claims. Moreover, Applicants find no disclosure in the Sainton patent of using charges calculated by the data rating application to "update an account balance" as set forth in Applicants' claims 6-8, 28-30, 50-52 and 91-93. Further, Applicants find no disclosure in the Sainton patent of detecting beginning and ending events to calculate charges as set forth in Applicants' claims 9-11, 31-33, 53-55 and 94-96. For these reasons, the Sainton patent, either alone or in combination with so-called "admitted prior art", would not render any of Applicants' pending claims unpatentable.


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PATENT

**CONCLUSION**

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested. If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at (415) 576-0200.

Respectfully submitted,

  
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